

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUL 19 1995

In re Application of) MM DOCKET NO. 93-265
)
PINE TREE MEDIA, INC.) File No. BR-900817UF
)
For Renewal of License of Station KARW(AM),)
Longview, Texas)

To: Administrative Law Judge John M. Frysiak

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MASS MEDIA BUREAU'S REPLY TO
PRAISE MEDIA, INC.'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

1. On July 5, 1995, Praise Media, Inc. ("Praise Media") filed Proposed Findings of Fact and Conclusions of Law (PFCs) in the above-captioned proceeding. The Bureau hereby replies to Praise Media's PFCs. Our failure to reply to any particular finding or conclusion contained in Praise Media's PFCs should not be construed as a concession to its accuracy or completeness. The Bureau submits that its findings of fact are an accurate and complete presentation of the relevant record evidence and that its conclusions of law properly apply Commission precedent in light of the record.

2. Praise Media suggests throughout its pleading that it should be regarded as the successor-in-interest to Station KARW(AM) and urges the Presiding Judge to grant the pending renewal application. The obvious problem is that while Praise Media desires to reap

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all the benefits as licensee of KARW(AM), it rejects all responsibility for the very serious derelictions that it and those who previously operated the radio station committed.

3. Praise Media argues, at pp. 36-37, that despite multiple unauthorized transfers of control, Issue No. 1 should nonetheless be resolved in Praise Media's favor. This is absurd. Praise Media personally engaged in one of the unauthorized transfers of control of KARW(AM) and concedes the existence of other such violations of § 310(d) of the Communications Act. Contrary to Praise Media's suggestion, an intent to deceive the Commission is not a prerequisite to concluding that Praise Media violated § 310(d) of the Communications Act. Section 310(d) was violated each time KARW(AM)'s license was transferred without Commission approval. In essence, Praise Media is mixing "apples and oranges" in its analysis of Issue No. 1. Whether Praise Media should be disqualified for its role in these transfers is a different question entirely from whether there were unauthorized transfers of control, in violation of the Act. The Bureau submits that § 310(d) was violated and the Presiding Judge must so find.

4. Praise Media's treatment of Issue No. 3, at pp. 38-39, involving multiple failures to respond to official letters of inquiry from the Commission, also cannot be credited. Praise Media concedes that it violated § 73.1015 of the Commission's Rules on multiple occasions. However, it suggests that the issue should nonetheless be resolved in its favor because disqualification is not warranted. Praise is again mixing "apples and oranges." Whether Praise Media should be disqualified is a separate question from whether it violated § 73.1015

of the Commission's Rules. Furthermore, Praise Media's reliance on Dixie Broadcasting, Inc., 8 FCC Rcd 4386 (ALJ, 1993), is misplaced. In Dixie, the issue was whether the licensee misrepresented material facts in its various responses to Commission inquiries. The issue in the instant case, by contrast, does not involve any such misrepresentations in responses to Commission inquiries; rather the issue involves whether Praise Media responded at all to Commission inquiries. The record evidence reveals that Praise Media repeatedly ignored Commission inquiries and, in the one instance when it did respond, its response was incomplete and unsigned. If nothing else, the evidence adduced under this issue demonstrates that Praise Media cannot be relied upon to carry out basic responsibilities expected of a licensee. In any event, it is clear that Praise Media violated § 73.1015 and, therefore, the issue must be resolved against Praise Media.

5. Praise Media's treatment of Issue 5, at pp. 41-42, should also be rejected because it is simply unrelated to the question presented. Praise Media argues that the issue, which pertains to Praise Media's capability of returning KARW(AM) to the air, should be resolved in its favor because it has a "plan" to make the station operational again. But the issue does not inquire whether Praise Media simply has a plan to get the station back on the air. Rather, the issue, as added by the Presiding Judge, seeks to determine whether the licensee has the "capability and intent" to "expeditiously" return the station to the air. The record evidence clearly reveals that Praise Media lacks the necessary capability and intent. Indeed, notwithstanding Janet Washington's initial claims to the contrary, it is clear from the record that she does not have money presently available with which to obtain the equipment

necessary to return the station to the air. Furthermore, Cavan Communications, 10 FCC Rcd 2873 (ALJ, 1995), upon which Praise Media relies, is clearly inapposite. Praise Media suggests that in Cavan a similar issue was resolved in the licensee's favor on the basis that the licensee had a plan to return the station to the air. This is wholly misleading. In Cavan the licensee had more than just a plan to get the station back on the air; in fact the station was *already on the air* when the hearing commenced. 10 FCC Rcd at 2876, ¶ 27. The Bureau does not dispute that Praise Media has a desire ultimately to return KARW(AM) to the air. However, the record evidence clearly shows that Praise Media lacks both the capability and the intent to expeditiously return the station to the air. Accordingly, the issue must be resolved adversely to Praise Media.

6. Praise Media concedes, at p. 43, that it violated § 73.1740 of the Commission's Rules. Nevertheless, it urges the Presiding Judge to rule in its favor with respect to Issue No. 6 because "[s]imple fairness and compassion requires (sic) that Praise cannot be disqualified under this issue." As was the case with its treatment of other issues, Praise Media is confusing the issue at hand with the ultimate issue. Whether Praise Media should ultimately be disqualified in this proceeding is a separate and distinct question from whether it violated the Commission's silent station rules. On the narrow question of whether Praise Media failed to notify the Commission that KARW(AM) was off the air or failed to request authority for KARW(AM) to remain silent, the issue must be resolved adversely to Praise Media.

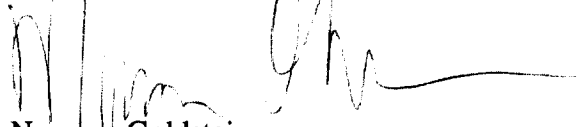
7. Conspicuously absent from Praise Media's pleading is any discussion about the profound lack of candor on the witness stand of Praise Media's sole principal, Janet Washington. Even if an equitable argument could be made justifying renewal of the KARW(AM) license, Janet Washington's demonstrated propensity to dissemble stands as an absolute bar to any such favorable action. Janet Washington misrepresented material facts while under oath.¹ Praise Media engaged in an unauthorized transfer of control, in violation of the Communications Act. The company failed to notify the Commission that KARW(AM) was off the air, and it ignored rules that required a grant of authority for KARW(AM) to remain silent. Praise Media repeatedly disregarded official Commission letters of inquiry. Finally, there is no reliable basis for believing that Praise Media is capable of returning KARW(AM) to the air anytime soon.

8. In sum, what we have here is a silent station with a licensee, Pine Tree Media, Inc., that has effectively renounced any interest in the facility. Further, the only entity that *has* expressed in interest in running the station has demonstrated by compelling evidence that it cannot be trusted to tell the truth, cannot be relied upon to comply with the Commission's


¹ Praise Media throughout its PFCs relies on hearsay statements which were proffered by Janet Washington. By their very nature these hearsay statements were unreliable. In this instance, the hearsay statements are even more untrustworthy because of Janet Washington's lack of reliability.

Rules or the Communications Act, and is incapable of expeditiously returning the station to the air. Praise Media is basically unfit to be a Commission licensee, and the captioned renewal application should be denied.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau



Norman Goldstein
Chief, Complaints and Investigations Branch



Gary P. Schonman



Robert A. Zauner
Attorneys
Mass Media Bureau

Federal Communications Commission
2025 M Street, N.W., Suite 7212
Washington, D.C. 20554
(202) 632-6402

July 19, 1995

CERTIFICATE OF SERVICE

L. Tesha Conley, a secretary in the Complaints and Investigations Branch, Mass Media Bureau, certifies that she has, on this 19th day of July 1995, sent by regular United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Reply to Praise Media, Inc.'s Proposed Findings of Fact and Conclusions of Law" to:

Dennis J. Kelly, Esq.
Cordon and Kelly
Post Office Box 6648
Annapolis, MD 21401

L. Tesha Conley